

<b>TO: Mail Stop 8</b> <b>Director of the U.S. Patent &amp; Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court Northern District of California on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. <b>CV 11-00870 EMC</b>	DATE FILED <b>2/24/2011</b>	U.S. DISTRICT COURT <b>Northern District of California, San Francisco</b>
PLAINTIFF <b>GROUPION, LLC.</b>		DEFENDANT <b>GROUPON, INC., ET AL.</b>
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
<b>1 3, 816, 266</b>		<b>** See Enclosed Complaint **</b>
<b>2 3, 685, 954</b>		
<b>3</b>		
<b>4</b>		
<b>5</b>		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
<b>1</b>			
<b>2</b>			
<b>3</b>			
<b>4</b>			
<b>5</b>			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK  Richard W. Wicking	(BY) DEPUTY CLERK  Mark J. Jenkins	DATE  February 28, 2011
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Copy 1—Upon initiation of action, mail this copy to Commissioner    Copy 3—Upon termination of action, mail this copy to Commissioner  
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner    Copy 4—Case file copy

COPY

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RIGHT TO TRIAL BY JURY  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ADR

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CV 11-0870

EMC

GROUPION, LLC a California limited liability  
company,

Plaintiffs,

vs.

GROUPON, INC., a Delaware corporation,  
THE POINT, INC., a Delaware corporation, and,  
GOOGLE, INC., a Delaware corporation,

Defendants.

COMPLAINT FOR DECLARATORY  
AND OTHER RELIEF, TRADEMARK  
INFRINGEMENT AND UNFAIR  
COMPETITION

1 Plaintiff Groupon LLC ("Groupon" or "Plaintiff") alleges as follows against  
2 Defendants Groupon, Inc. ("Groupon"), The Point, Inc. ("The Point") and Google, Inc. ("Google") as  
3 follows:

4 **NATURE OF ACTION**

5 1. This is an action for trademark infringement and unfair competition based upon  
6 Defendants' having improperly and willfully used a mark nearly identical to Plaintiff's trademark  
7 GROUPION, with Trademark Registration No. 3,816,266 (the "Trademark" or the "Mark"), without  
8 permission, thereby causing customer confusion, and unfairly competing with Plaintiff by the  
9 improper use of Plaintiff's trademark.

10 **JURISDICTION AND VENUE**

11 2. This action arises under the trademark laws of the United States. 15 U.S.C. § 1051 *et*  
12 *seq.* This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331  
13 and 1338(a) and (b), as well as 15 U.S.C. § 1121. Venue is proper in this District pursuant to 28  
14 U.S.C. §§ 1391(b) - (c) in that, on information and belief, Defendant has used, sold, offered for sale,  
15 distributed, or otherwise commercially exploited in this District products that infringe upon Plaintiff's  
16 Trademark and has improperly created confusion as to the owner of such marks or goods associated  
17 with such marks in this District. The Court has supplemental jurisdiction over Plaintiff's pendent  
18 claims pursuant to 28 U.S.C. § 1367.

19 **THE PARTIES**

20 3. Groupon LLC is a limited liability company duly organized and existing under the  
21 laws of the State of California, having its principal place of business in Santa Clara County,  
22 California. Groupon started in Germany in 2007 and quickly expanded in the same year to the  
23 United States, building and selling a web-based Business Groupware and Customer Relations  
24 Management ("CRM") platform (the "Software Portal") which helps companies and project teams  
25 work together and execute different tasks within one integrated working environment, including  
26 coupon management.

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4. Defendant Groupon is a Delaware corporation with its principal place of business in Chicago, Illinois and offices in Santa Clara County, in Palo Alto, California, and it offers its own software-as-a-service portal for merchants.

5. Defendant The Point, Inc. (“The Point”) is a Delaware corporation. The Point is the original owner of the Groupon trademark and is the parent corporation of Defendant Groupon.

6. Defendant Google, Inc. is a Delaware corporation with its principal place of business in Mountain View, California. Defendant Google has aided Defendant Groupon through, among other things, its sale of advertisements related to Plaintiff's trademark.

## BACKGROUND FACTS

7. Plaintiff sells its Software Portal throughout the world, and the United States, branded with the Trademark.

8. Plaintiff has continuously used the Trademark in interstate commerce since May 2007 in connection with the sale of goods and services. From May 2007 through 2008, the Mark was prominently used on Plaintiff's website, [www.groupion.net](http://www.groupion.net), and from 2008 to present the Mark has been prominently used on Plaintiff's website [www.groupion.com](http://www.groupion.com).

9. Beginning in May 2007, an on-demand version of the Software Portal was marketed, sold and otherwise available on www.groupion.net in the United States. A copy of the domain registration is attached hereto as Exhibit 1.

10. In November 2008, Plaintiff attended an international trade show called the “CRM-Expo”, alongside major US corporations such as Oracle, Microsoft, and Salesforce.com. At that trade show, Plaintiff promoted and marketed the Trademark to such US corporations among others.

11. The organizers of the “CRM-Expo” publish a list of all exhibitors on their website well in advance of the actual show. The Trademark was, therefore, promoted on the website of the CRM-Expo before November 2008.

12. On December 22, 2008, Mr. Peter-Christoph Haider filed for a trademark registration in the name "Groupion." The Trademark was registered on July 13, 2010 and bears registration number 3,816,266. A copy of the "Groupion" trademark registration is attached hereto as Exhibit 2.

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1           13.     Plaintiff has extensively advertised and promoted the Mark, and has expended  
2 considerable effort and expense in offering quality computer software, software as a service,  
3 electronic documentation and related services delivered over the Internet under the Mark. As a result  
4 of Plaintiff's use and promotion effort, the Mark has come to identify the goods and services of  
5 Plaintiff.

6           14.     In February 2011, Mr. Haider assigned all right, title and interest in the Trademark in  
7 the United States to Plaintiff.

8           15.     Defendant uses the Trademark in a form with only a single letter different (the sixth  
9 letter "i" is missing in Defendant's usage) in connection with the sale of its goods and services, and  
10 sales of similar products, such as providing online coupons, including in prominent displays on its  
11 website, [www.groupon.com](http://www.groupon.com).

12           16.     Defendant's use of the Trademark is causing actual confusion in the actual and  
13 potential customers of Plaintiff.

14           17.     Defendant's use of the Trademark is causing confusion in major search engines,  
15 which, when the Trademark is searched for, results in a request for correction which would change  
16 Plaintiff's name to Defendant's name. For example, if one conducts a search on [www.google.com](http://www.google.com)  
17 for "Groupon", the results include a statement, "Did you mean: groupon." Defendant Google has  
18 failed and refused to correct this.

19           18.     Defendant is using the Trademark in its advertising, such that when one searches for  
20 the identical mark, "Groupon", on [www.google.com](http://www.google.com), a banner ad purchased by Defendant appears at  
21 the top of the search result with hyperlinks to Defendant's website.

22           19.     Plaintiff is informed and believes, and on that basis alleges, that Defendant's use of  
23 the Trademark is in connection with the sale of coupon-related software and services, and as such  
24 will likely confuse customers, and that Defendant Google is aiding and abetting such confusion.

25                   **FIRST CLAIM FOR RELIEF**

26                   (Declaratory and Other Relief Against Defendants Groupon and The Point)

27           20.     Plaintiff repeats and re-alleges the allegations set forth in Paragraphs 1 through 19,  
28 above, as if set forth in full herein.

1           21.     A dispute has arisen between Plaintiff, on the one hand, and Defendants, on the other  
2 hand, regarding the validity of Defendant's trademark registration in the word "GROUPON",  
3 registration number 3,685,954.

4           22.     After Plaintiff began using its GROUPION mark in commerce, Defendant Groupon  
5 purported to take an assignment of rights from a failed company named "THE POINT, INC." and  
6 purported to begin using the mark GROUPON in connection with "promoting the goods and services  
7 of others by providing a website featuring coupons, rebates, price-comparison information, product  
8 reviews, links to the retail websites of others, and discount information."

9           23.     Defendant Groupon's predecessor-in-interest (THE POINT, INC.) applied for and  
10 obtained registration of the GROUPON mark based on the false and misleading representation that  
11 THE POINT, INC. had used the GROUPON mark in interstate commerce on October 21, 2008; the  
12 CEO of Groupon, Inc. publicly stated (to the Wall Street Journal and on the company website) that  
13 the first "use" of the GROUPON mark was October 2008 in connection with the discounted sales of  
14 pizzas wholly within the City of Chicago (and therefore not in interstate commerce). Neither  
15 Defendant Groupon nor its predecessor-in-interest informed the USPTO of this.

16           24.     Defendant Groupon's true first use date in commerce is after the priority date  
17 established for Plaintiff's use of the Mark based on Plaintiff's filing for registration of the  
18 GROUPION mark in the Federal Republic of Germany on November 27, 2008 and after Plaintiff's  
19 earlier uses of the GROUPION mark throughout the world, including in the United States in October  
20 2007, and earlier.

21           25.     Defendant Groupon procured registration of GROUPON without disclosing to the  
22 USPTO its knowledge of the GROUPION mark, including its knowledge that the domain name  
23 ([www.groupon.com](http://www.groupon.com)) was and is owned by Plaintiff.

24           26.     Defendant Groupon's registration for GROUPON, U.S. Registration No. 3,685,954  
25 issued on September 22, 2009 and it is, therefore, less than five (5) years old. Defendant Groupon is  
26 accordingly not entitled to any claim of incontestability.

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27. Plaintiff's use of the Mark predates said Defendants' true first date of use of its mark GROUPON in commerce and, therefore, Plaintiff has priority of use in commerce with respect thereto.

28. A likelihood of confusion exists between the mark GROUPION, owned by Plaintiff, and the mark GROUPON, owned by Defendant, and actual evidence of confusion has commenced and is continuing such that Plaintiff has been and is being damaged by the continued registration and use of the GROUPON mark by Defendant.

29. Because of the priority of use in commerce by Plaintiff and because of the likelihood of continuing confusion between GROUION by Plaintiff and GROUPON by Defendant, Defendant's registration is not entitled to remain registered, and it should be cancelled.

30. Because Defendant procured its registration, directly or indirectly, through misrepresentation, lack of candor and other inequitable conduct before the USPTO, Defendant's registration is not entitled to remain registered and should be ordered to be cancelled by this Court for this additional and independent ground. In connection with such cancellation, Defendant GROUPON should be enjoined from registering or purporting to register any confusingly similar mark.

### **SECOND CLAIM FOR RELIEF**

(Trademark Infringement [15 U.S.C. § 1114(1)] Against All Defendants)

31. Plaintiff re-alleges each of the allegations of Paragraphs 1 through 19, above, and incorporates the same by this reference as if fully set forth herein.

32. Plaintiff has adopted and has used the Trademark in interstate commerce for its goods and services since May 2007, and is currently using the Trademark in interstate commerce.

33. Plaintiff has continuously used the Trademark to identify its goods and services, and to distinguish them from those made by others, by, among other things, prominently displaying the Trademark on or in connection with its products, advertising brochures, mailings, and manuals distributed throughout the United States and the world. Since the registration date for the Trademark, Plaintiff has given constructive notice that the Trademark is registered in the U.S. Patent and Trademark Office by displaying the marks with the letter R enclosed within a circle after them.

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1           34. Plaintiff is informed and believes that Defendants have infringed the Trademark in  
2 interstate commerce within the meaning of the Lanham Act by using the Trademark on products  
3 and/or in connection with services, and/or the marketing, advertising or commercialization of such  
4 products and/or services, thus creating confusion as to such ownership and the source of goods or  
5 services designated by such Trademark. Such uses of the Trademark by Defendants are without  
6 permission or authority of Plaintiff and said uses by Defendants are likely to cause confusion, to  
7 cause mistake, and to deceive the public.

8           35. Plaintiff is informed and believes that Defendants' unauthorized use of the Trademark  
9 has been committed willfully and maliciously, and with the intent to cause confusion, mistake, and to  
10 deceive, such that Plaintiff is entitled to exemplary damages sufficient to deter such conduct by  
11 Defendants in the future.

12           36. Plaintiff is informed and believes, and on that basis alleges, that by reason of the  
13 above acts, Defendants have caused, are causing, and, unless enjoined and restrained by this Court,  
14 will continue to cause Plaintiff great and irreparable injury to, among other things, the value of the  
15 Trademark, the goodwill and business reputation of Plaintiff, and its business relations with  
16 customers and prospective customers, all of which cannot be adequately measured or compensated in  
17 money damages. Plaintiff has no adequate remedy at law and is entitled to injunctive relief enjoining  
18 and restraining Defendants, their officers, agents, servants, employees, partners, licensees, affiliates,  
19 and attorneys, and those persons in active concert or participation with them, including but not  
20 limited to Defendants' distributors, resellers, and customers, from further use of Plaintiff's  
21 Trademark.

22           37. As a direct and proximate result of Defendants' trademark infringement, Plaintiff has  
23 been, and continues to be, severely damaged in an amount yet to be determined, but to be proven at  
24 trial. Plaintiff is also entitled to enhanced damages under the Lanham Act due to Defendants'  
25 deliberate, willful and intentional use of Plaintiff's Trademark in an amount to be proven at trial.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, and those  
3 persons in control of or acting in concert therewith, as follows:

4 A. For preliminary and permanent injunctions enjoining each Defendant, its officers,  
5 agents, servants, employees, and all other persons in active concert with it from directly or indirectly  
6 infringing Plaintiff's trademarks or continuing to assist in any such activity;

7 B. For Plaintiff's actual damages according to proof, and for disgorgement of any  
8 additional gains, profits, and advantages obtained by each Defendant attributable to its infringements  
9 of Plaintiff's Trademark, in accordance with proof;

10 C. For declaratory and other relief that Defendant Groupon's mark, registration number  
11 3,685,954, is not entitled to remain registered, and that it should be cancelled;

12 D. For statutory damages for each Defendant's infringement;

13 E. For punitive damages in amounts sufficient to punish each Defendant for its wrongful  
14 acts;

15 F. For treble damages as allowed by law;

16 G. For an accounting by each Defendant of all gains, profits, and advantages derived  
17 from their acts of infringement and for its other violations of law;

18 H. For pre-judgment interest;

19 I. For its costs of suit and for its reasonable attorneys' fees as authorized by law; and

20 J. For such other, further, and different relief as the Court deems just and proper.

21  
22 Dated: February 24, 2011

Respectfully submitted,

23 COMPUTERLAW GROUP LLP

24  
25 By: 

Jack Russo  
Christopher Sargent

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27 Attorney for Plaintiff  
GROUION LLC  
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3 **DEMAND FOR JURY TRIAL**

4 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury  
5 as to each issue for which Plaintiff is entitled to trial by jury.

6 Dated: February 24, 2011

Respectfully submitted,

COMPUTERLAW GROUP LLP

7  
8 By:

  
Jack Russo  
Christopher Sargent

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10 Attorney for Plaintiff  
11 GROUPION LLC  
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